

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SANCHEZ, CALKINS, and
SEMINARA, Minors.

UNPUBLISHED

April 15, 2014

No. 317728
St. Clair Circuit Court
Family Division
LC No. 09-000261-NA

In re J. A. CALKINS, Minor.

No. 317922
St. Clair Circuit Court
Family Division
LC No. 09-000261-NA

Before: STEPHENS, P.J., and SAAD and BOONSTRA, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother appeals the trial court order that terminated her parental rights under MCL 712A.19b(3)(c)(i), (c)(ii), (g), and (j), and respondent-father appeals the termination of his parental rights under MCL 712A.19b(3)(g) and (j). For the reasons stated below, we affirm.

I. STANDARD OF REVIEW

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) is met by clear and convincing evidence and that termination is in the best interests of the child. MCL 712A.19b(5); *In re Sours*, 459 Mich 624, 632-633; 593 NW2d 520 (1999). Our Court reviews the trial court's decision "that a ground for termination has been proven by clear and convincing evidence" for clear error. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). We take into account the trial court's expertise in judging the credibility of the witnesses who appeared before it. MCR 2.613(C); MCR 3.902(A); *Miller*, 433 Mich at 337.

II. RESPONDENT MOTHER

A. MCL 712A.19(B)(3)(C)

In relevant part, MCL 712A.19b(3) states:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

When the adjudication took place in June 2012, the children were removed from respondent-mother's care because of her substance abuse, the presence of her abusive boyfriend, and the fact that her home had been raided for drugs. These continued throughout 2012 and 2013. Respondent mother both tested positive for drugs and missed drug screens, visited her children with a .06 blood alcohol level, had her house raided (once again) by the police, and continued her relationship with her abusive, drug-dealer boyfriend. Moreover, respondent-mother did not seem to understand that her substance abuse and abusive relationship posed a significant risk to her children. Accordingly, respondent mother's substance abuse and poor relationship choices "continue[d] to exist" at the time of termination, and her conduct demonstrated that "there is no reasonable likelihood that the conditions" would be "rectified within a reasonable time considering the child's age." MCL 712A.19b(3)(c)(i). The trial court therefore correctly terminated her parental rights under MCL 712A.19b(3)(c)(i).

B. MCL 712A.19B(3)(G)

Nor did the trial court clearly err when it terminated respondent-mother's parental rights under MCL 712A.19b(3)(g), which permits termination when:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

Here, respondent-mother failed to provide "proper care and custody" for her children, in that she had difficulty providing for them financially. She also continued her relationship with a violent and criminal man, and persisted in abusing various substances. Despite her boyfriend's abusive behavior, she instructed her children not to tell others of his presence during visits. Also, during the visits with the children, she displayed erratic behavior, often requested that the sessions end early, and only attended 34 of 72 visits. These facts undermine her claim that she had good parenting skills, and highlight her inability to provide a suitable environment for her

children. Therefore, the trial court properly terminated respondent mother's parental rights under MCL 712A.19b(3)(g).

C. MCL 712A.19B(3)(J)

MCL 712A.19b(3)(j) allows the termination of parental rights when:

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

As noted, respondent-mother's conduct involved extensive substance abuse, and a continuing and violent relationship with a drug dealer. Though she maintains that likelihood of future harm is conjecture, the facts belie this assertion. Again, throughout the time the children were in foster care, respondent-mother maintained her relationship with an abusive man. She continued her substance abuse. And the police raided her home for drugs. Respondent-mother's conduct clearly indicates that the children would be at risk of harm in her care, and thus the trial court properly terminated her parental rights under MCL 712A.19b(3)(j).¹

D. BEST INTERESTS OF THE CHILD

After the Department demonstrates clear and convincing evidence of a statutory ground for termination, it then must prove by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App 76, 90; 836 NW2d 182 (2013); MCL 712A.19b(5). In making a determination regarding a child's best interests, the trial court may look to many factors, including the respondent's bond with the children, her parenting ability, and the "child's need for permanency, stability, and finality." *Olive/Metts*, 297 Mich App at 42.

Here, the trial court correctly found that the children's best interests mandated termination of respondent-mother's parental rights. The children's bond with their mother weakened during the time they spent in foster care. As noted, respondent-mother continues to have substance abuse problems and make poor relationship choices. And respondent mother's dysfunctional home is hardly capable of providing "permanency and stability." *Id.* Nor has respondent-mother provided any argument or evidence to show that termination of parental rights was not in the children's best interests.

Accordingly, the trial court correctly found that termination of respondent-mother's parental rights was in the children's best interests.

III. RESPONDENT FATHER

¹ Because the trial court properly terminated parental rights under MCL 712A.19b(3)(c)(i), (g) and (j), we need not address respondent-mother's claims that it erred when it terminated her rights under MCL 712A.19b(3)(c)(ii). "Only one statutory ground for termination need be established." *Olive/Metts*, 297 Mich App at 41.

A. MCL 712A.19B

As noted, MCL 712A.19b(3)(g) and (j) state that termination is permissible when:

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

Here, the trial court properly terminated respondent-father's parental rights under both subsections of MCL 712A.19b because: (1) he failed to provide proper care and custody for J.A.; and (2) J.A. would likely be harmed if placed in his care. Respondent father has spent much of his adult life in prison for crimes that involve both drugs and violence. During the times he has not been in prison, respondent-father did not spend time with or take care of J.A. He did not make arrangements for her care by relatives or others during his incarceration, nor did he make any effort to maintain a relationship with J.A. while incarcerated. Moreover, he gave no evidence that he has adequate parenting skills, or that he could provide suitable housing or employment. There is little indication that respondent-father has changed his criminal behavior: his possibility of parole has been delayed because of his behavior infractions while in prison. And, even if he were paroled soon, he would still need to demonstrate his parental fitness and maintain it for a sustained period of time before the child could be placed in his care, which he has not done.

Respondent-father has thus failed to provide proper care and custody for J.A, and there is a reasonable likelihood she would be harmed, both emotionally or physically, if returned to his care. See *In re Hudson*, 294 Mich App 261, 268; 817 NW2d 115 (2011). The trial court therefore properly terminated his parental rights under MCL 712A.19b(3)(g) and (j).²

B. BEST INTERESTS OF THE CHILD

As noted, after the Department demonstrates clear and convincing evidence of a statutory ground for termination, it then must prove by a preponderance of the evidence that termination is in the child's best interests. *In re Moss*, 301 Mich App at 90; MCL 712A.19b(5). When it determines a child's best interests, the trial court may look to many factors, including the

² MCL 712A.19a(2) requires that the Department make reasonable efforts to reunify the child and family, which it did here by providing respondent-father with a treatment plan and list of services. Respondent father did not comply with these services, nor does he suggest what services could be put in place to help him provide a safe environment for J.A.

respondent's bond with the children, her parenting ability, and the "child's need for permanency, stability, and finality." *Olive/Metts*, 297 Mich App at 42.

The trial court properly found that termination of respondent-father's parental rights was in J.A.'s best interests. Respondent-father has not communicated with his daughter in three years, and there is no bond between them. Again, he failed to plan for her care during his incarceration, and there is no evidence he can provide for her material or emotional well-being. It is unlikely that respondent-father will be able to provide J.A. with a safe and stable home life. Accordingly, the trial court properly terminated respondent-father's parental rights.

Affirmed.

/s/ Cynthia D. Stephens
/s/ Henry William Saad
/s/ Mark T. Boonstra